

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2010 OF 2022
IN
CRIMINAL APPLICATION NO. 451 OF 2022

Shaikh Sami s/o Shaikh Salim,
Age : 33 years, Occu. Private Job as Driver,
R/o. Ramabai Ambedkar Nagar,
Parbhani, Taluka & District Parbhani.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Mr. Govind A. Kulkarni holding for Mr. D. R. Deshmukh,
Advocate for the Applicant
Mr. M. M. Nerlikar, APP for respondent/State
.....

CORAM : SMT. VIBHA KANKANWADI
AND
RAJESH S. PATIL, JJ.

DATE : AUGUST 29, 2022

ORAL JUDGMENT [PER SMT. VIBHA KANKANWADI, J.]: -

1. Present application is filed seeking suspension of substantive sentence of the applicant awarded in Sessions Trial No. 25/2019 on 06.05.2022 by learned Additional Sessions

Judge, Parbhani. The present applicant is the original accused no. 3, who has been sentenced thus : -

- (i) The accused No. 3 – Shaikh Sami s/o. Shaikh Salim is convicted for the offence punishable under Section 302 of the Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 1000/- (One thousand rupees only) in default to suffer simple imprisonment for 06 (six) months.
- (ii) The accused No. 3 – Shaikh Sami s/o. Shaikh Salim is further convicted for the offence punishable under Section 326 of the Indian Penal Code vide Section 235(2) of the Code of Criminal procedure and sentenced to suffer rigorous imprisonment for 07 (seven) years and to pay fine of Rs. 1000/- (One thousand rupees only) in default to suffer simple imprisonment for 06 (six) months.
- (iii) The accused No. 3 – Shaikh Sami s/o. Shaikh Salim is further convicted for the offence punishable under Section 7/25 of the Indian Arms Act vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for 07 (seven) years and to pay fine of Rs. 1000/- (One thousand rupees only) in default to suffer simple imprisonment for 06 (six) months.

2. Heard learned counsel Mr. Govind A. Kulkarni holding for Mr. D. R. Deshmukh for the applicant and learned APP Mr. M. M. Nerlikar for the respondent/State.

3. At the outset, it is to be noted that the applicant along with co-accused stood charged for committing murder of one Shaikh Sohail Shaikh Ahat @ Patel by forming unlawful assembly.

The applicant had assaulted the deceased with sword. Further, he has cut the fingers of informant by sword and thereby committed offence under Section 326 of the Indian Penal Code. The points which go against the applicant are;

- (i) He was not on bail throughout the trial.
- (ii) In the post-mortem report of Shaikh Sohail, three surface injuries were found. The first one is stab injury over left side of chest. The internal injury was corresponding to the external injury.
- (iii) Testimony of PW10 – Dr. Shaikh Abdul Moij, the Medical Officer, who conducted the autopsy, would show that there was stab injury to the heart and liver which had caused death of Shaikh Sohail, that means there was clear case of homicidal death. Informant is the injured witness, who lost three fingers in the assault by means of sword by the present applicant.
- (iv) There are also other eye-witnesses and injured eye-witnesses to the incident.

4. All these witnesses appear to have stated that there was enmity and previous quarrel. Therefore, when there appears to be

prima facie evidence, this cannot be taken as a fit case where the sentence should be suspended pending appeal.

5. Criminal Application, therefore, stands rejected.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE